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Leader Communications, Inc. and International Association of Machinists, AFL-CIO, Local 171.
Case 17-CA-069008

August 20, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND JOHNSON

On April 10, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB No. 90. Thereafter, the General Counsel filed an application for enforcement and the Respondent filed a petition for review in the United States Court of Appeals for the Tenth Circuit.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein.¹ Accordingly, we affirm the judge's rul-

¹ In finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by bargaining in bad faith when it repudiated, without good cause, the November 29, 2011 tentative agreement with the Union, we additionally note that the Board has held that "[i]f an agent for one of the parties to collective-bargaining negotiations has only limited authority to negotiate a contract, this limitation must be disclosed to the other party before agreement is reached." *Adams Iron Works, Inc.*, 221 NLRB 71, 78 (1975), enf'd. 556 F.2d 557 (2d Cir. 1976), and cases

ings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB No. 90, which is incorporated herein by reference.²

Dated, Washington, D.C. August 20, 2014

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

cited therein. Here, there was no credible evidence that the Respondent's sole negotiator at the bargaining sessions, Inslee Bennett, informed the Union prior to reaching the November 29 tentative agreement that he would need to seek approval authority from the Respondent's CEO to bind the Respondent. Rather, the credited evidence established that Bennett had negotiated binding contracts on the Respondent's behalf prior to his dealings with the Union and that he was one of two individuals authorized by the Respondent to legally commit it to any contract.

Member Johnson, like his colleagues, does not rely on the judge's findings that the Respondent bargained in bad faith by other conduct. He observes that, although the Respondent throughout the negotiations with the Union had adhered to its initial position on contract duration, wages and nonwage benefits, the parties reached tentative agreements on a number of non-economic issues. Further, in the Respondent's final offer, it acceded to the Union's position on just cause in seniority. It is Member Johnson's view that all of these concessions demonstrated the Respondent's intent to reach an agreement. See *Larsdale, Inc.*, 310 NLRB 1317, 1320 (1993) (employer did not engage in bad-faith bargaining where it failed to make concessions with respect to wages, health insurance, and pensions but made a number of significant concessions on other issues); *Garden Ridge Management*, 347 NLRB 131, 131 and fn. 5 (2006) (the General Counsel failed to prove by a preponderance of the evidence that the employer did not seek to obtain agreement with the union).

² We shall substitute a new notice in accordance with our decision in *Durham School Services*, 360 NLRB No. 85 (2014).

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to bargain in good faith by repudiating, without good cause or in order to frustrate bargaining, tentative agreements previously reached with the International Association of Machinists, AFL-CIO, Local Union 171 (the Union), which is the exclusive collective-bargaining representative of the employee unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning the terms and conditions of employment and,

if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time computer electronics technicians employed by the Employer [Respondent] at Tinker Air Force Base, Oklahoma City, Oklahoma to provide support for the three (3) E-3 Mission Crew Simulators and one (1) Facility for Interoperability Testing device, but EXCLUDING all other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL reinstate the tentative agreement previously reached on November 29, 2011, covering contract duration, wages, just cause, and nonwage benefit provisions.

LEADER COMMUNICATIONS, INC.

The Board's decision can be found at www.nlr.gov/case/17-CA-069008 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

